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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On November 9, 2011, F.J. Pollak - President and Chief Executive Officer, TracFone Wireless, Inc., Javier Rosado - Senior Vice President - Lifeline Services, TracFone, and undersigned counsel met with Kimberly Scardino, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, and with Jamie Susskind, an Attorney-Advisor in the Telecommunications Access Policy Division. During the meeting, we discussed issues before the Commission in the above-captioned pending Lifeline and Link Up Reform and Modernization proceeding.

Bundling of Voice and Broadband Lifeline Service Should Not be Required

We described why it would be impracticable to provide a "bundled" Lifeline service consisting of voice service and broadband service at this time. Among the impediments to such a bundled offering are the handset costs. As part of its SafeLink Wireless® Lifeline program, TracFone provides qualified customers with E911-compliant wireless handsets at no charge to the customers. The cost of those handsets is borne by TracFone, not by the Universal Service Fund. It would not be economically feasible for TracFone to provide Lifeline customers with devices capable of broadband Internet access (so-called "smartphones"). It would be necessary to require consumers to pay for such devices. Given the fact that Lifeline-eligible consumers are, by definition, low-income consumers, suitable arrangements would need to be made to finance the purchase of such devices. Such arrangements could entail participation by potential partners such as retail distributors, rental companies, etc.

In addition to device costs, transmission capacity for data service is costly -- more so than for voice service. In order to provide a meaningful broadband access component, Lifeline programs would require larger subsidies than the approximately $10.00 per customer per month currently available pursuant to the Commission's rules. Currently, TracFone offers a combined voice/broadband service under the brand name Straight Talk®. Straight Talk® provides customers with 30 days of unlimited voice calling, unlimited texts, and unlimited Internet access for $45 (a more limited Straight Talk® plan is available for $35). Straight Talk® is offered in conjunction with Walmart and is only available at Walmart stores. Since devices and airtime are purchased at Walmart locations, there is no mechanism for providing Straight Talk® as a Lifeline offering. It is possible that in the future, TracFone and Walmart could jointly develop a Lifeline version of Straight Talk®. However, that would require time and a significant commitment of resources. At this time, TracFone does not know whether Walmart would be willing to cooperate in the development of a Lifeline program built on Straight Talk® and, if so, whether the conditions of such commitment would be acceptable to TracFone.

Although bundled Lifeline programs should not be required now, TracFone long has supported broadband pilot programs and encourages the Commission to allow Eligible Telecommunications Carriers ("ETCs") to conduct such pilot programs. As long ago as October 2008, TracFone proposed use of pilot programs for broadband modeled on Lifeline.[1] Broadband pilot programs would enable ETCs to conduct market tests and experiments to gauge consumer demand for broadband services at various price points and with differing features. Such pilot programs will be instructive in enabling the Commission and ETCs to develop broadband offerings that identify equipment, logistics, marketing support, and subsidy levels sufficient to materially increase broadband adoption among low income households. Indeed, TracFone conducted such market tests in 2010 in developing its current SafeLink Wireless® Lifeline plans. It offered various plans in certain test markets consisting of different quantities of minutes at different prices. The results of those tests were invaluable in enabling TracFone to develop the SafeLink Wireless® plans currently available to Lifeline customers.

Rules of General Applicability Should Supersede Inconsistent Forbearance Conditions

We also discussed the impact of Lifeline rules which might be adopted in this proceeding on conditions of forbearance imposed on TracFone and other ETCs subject to forbearance and on the Commission-approved compliance plans submitted by those ETCs. In September 2005, the Commission exercised its statutory responsibility to forbear from application or enforcement of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i). See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. §214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005). The Commission's exercise of its forbearance authority was made subject to a series of conditions. In October 2005, TracFone submitted a compliance plan in which it described how it would comply with each of those forbearance conditions. That compliance plan was approved by the Commission in its April 2008 order designating TracFone as an ETC in ten states and the District of Columbia. In the Matter of Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, *et al*, 23 FCC Rcd 6206 (2008).[2]

[1] Petition to Establish a Trial Broadband Lifeline/Link Up Program, WC Docket No. 03-109, CC Docket No. 96-45, filed October 9, 2008.

[2] Other carriers which have received forbearance have been made subject to the same conditions. See, *e.g.*, Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), *et al*, 24 FCC Rcd 3381 (2009).

Certain rules promulgated in this proceeding may displace those forbearance conditions imposed on specific ETCs, including TracFone. To alleviate any potential confusion or inconsistency between carrier-specific forbearance conditions and rules of general applicability established by the Commission, TracFone respectfully suggests that the Commission state that to the extent any condition of forbearance is inconsistent with a rule established in this proceeding or other proceedings, that any validly-adopted rule will supersede the inconsistent forbearance condition.

Mandatory Verification of All Customers' Continuing Lifeline Eligibility Should be Phased In

Further, we discussed TracFone's proposal that all ETCs be required to verify annually that each of its Lifeline customers remains eligible for Lifeline support, remains head of household and that the household is only receiving one Lifeline-supported service. TracFone is required to verify each of its customers' continuing eligibility as a condition of forbearance; other ETCs (*i.e.*, those not subject to forbearance) only are required to verify a statistically-valid sample of their customers. If the Commission adopts TracFone's proposal to require all ETCs to verify annually their customers' continuing eligibility, there would need to be a plan for phasing in that requirement. TracFone proposes that the requirement be implemented on all ETCs in the following manner:

Commencing on the first month following the effective date of the rule governing annual verification, each ETC would be required to contact each of its Lifeline customers whose anniversary date of enrollment occurs during that month. For example, if the rules promulgated in this proceeding become effective February 15, 2012, each ETC would be required to contact each of its Lifeline customers who enrolled in its Lifeline program in March 2011 or any previous March. Those customers who respond by indicating that they no longer are Lifeline-eligible or who do not respond to the inquiries would be de-enrolled from Lifeline. In or before April 2012, all customers whose enrollment anniversary date was in April would be similarly contacted and those no longer Lifeline-eligible or who do not respond would be de-enrolled. Using this process, by the end of one year from the effective date of the rules, all Lifeline customers would have had their eligibility verified in accordance with this process.

State Lifeline Requirements which are Inconsistent with Federal Requirements and Which Impede Nationally-Uniform Lifeline Programs Should Not be Permitted

Another topic we addressed was the impediments to the Lifeline program caused by inconsistencies between federal and state requirements. Many states have established requirements governing such matters as Lifeline eligibility criteria, enrollment procedures and certification of eligibility which are consistent with, or at least compatible with, federal requirements. However, several states have imposed requirements which are inconsistent with federal standards and which impede the ability of national ETCs to provide service throughout the nation in a uniform, consistent manner. These problems are illustrated by several examples:

1. Information Maintenance Requirements - ETCs are directed by the Commission and by the Universal Service Administrative Company to destroy customer information once the information has been verified and used to confirm the consumer's eligibility for Lifeline enrollment. These destruction requirements are necessary to protect consumer privacy rights and expectations. However, several states have required TracFone (and presumably other ETCs) to retain such information. For example, Nevada requires ETCs to retain such customer data and Illinois is considering such a data retention requirement. These requirements place ETCs in predicament of having to choose whether to follow federal requirements or contrary state requirements.

2. Eligibility criteria - The federal eligibility rules and the rules of most states allow consumers to qualify for Lifeline either based on their income (typically, 135 percent of Federal Poverty Guidelines) or based on enrollment in qualifying assistance programs (*e.g.*, Medicaid, SNAP, LIHEAP, School Lunch Program). However, some states, such as Idaho, require all Lifeline applicants to provide proof of income levels, even for those consumers seeking to qualify based on enrollment in qualifying programs. As a result, Idaho is a *de facto* income-based eligibility-only state. Based upon TracFone's experience, more than 95 percent of Lifeline applicants demonstrate their eligibility using program-based eligibility criteria. To require documentation of income effectively eliminates program-based eligibility and significantly limits the availability of Lifeline assistance in those states which require such documentation.

3. Mandatory minimum charges - TracFone and certain other ETCs have chosen to take the entirety of the Lifeline support they receive and use that support to provide specified quantities of free service to Lifeline customers. These no-charge services afford low income consumers an important alternative to traditional discounted Lifeline offerings. The rapid growth in TracFone's program and in other ETCs' similar no-charge programs demonstrates that there is significant consumer demand for the free service alternatives. Unfortunately, one state -- California -- does not allow such no-charge services. All ETCs who have been designated as ETCs by the California Public Utilities Commission to provide Lifeline service in that state are required to impose monthly charges on their customers. As a result, these no-charge service options available in other states are not available to low-income consumers in California. In California, the PUC has required Lifeline customers to pay monthly charges for service plans which provide few, if any, more minutes than consumers in other states are receiving at no charge. There is no public interest justification why ETCs may utilize their USF support in most states to provide the no-charge Lifeline programs which literally millions of customers want[3] but not to allow such services to be available to consumers in other states.

As Lifeline evolves from being a subsidized discounted local exchange service offering to a service which makes available to low income consumers affordable telecommunications services for all distances, and as such services are offered by national providers on a national basis, states should not be allowed to limit the nature of those offerings.

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[3] TracFone alone has more than 3.8 million enrolled Lifeline customers, demonstrating strong consumer demand for such no-charge services.

Access to State Data Bases

During our meeting, Staff asked for information about state data bases which are available to TracFone. Currently, TracFone (and presumably other ETCs) have access to enrollment eligibility data bases in the following states: Florida, Washington, Wisconsin, Maryland, and Texas. These data bases are administered by various state agencies and departments including, for example, the Florida Department of Children and Families, the Washington Department of Social and Health Services, the Wisconsin Department of Children and Families, the Maryland Department of Human Resources, and the Texas Public Utilities Commission. While these data bases differ from each other, they do enable ETCs to prevent enrollment by unqualified applicants by enabling ETCs to confirm whether the applicants are enrolled in qualifying programs. They also have appropriate security protections such as mandatory password access and limits on what data are available and how they may be used. To date, only those states have data bases available. However, the fact that several states allow access to data bases to verify Lifeline eligibility demonstrates that states have the ability to do so.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

Mitchell F. Brecher

cc: Ms. Kimberly Scardino
Ms. Jamie Susskind